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6                   UNITED STATES DISTRICT COURT  
7                   EASTERN DISTRICT OF CALIFORNIA  
8

9 SUN PACIFIC FARMING COOPERATIVE, )           1:01-cv-6102 OWW CCC  
10 INC., )  
11 Plaintiff, )  
12 v. )  
13 SUN WORLD INTERNATIONAL, INC., )  
14 Defendant. )  
15 \_\_\_\_\_ )  
16 SUN WORLD INTERNATIONAL, INC., )  
17 a Delaware corporation, )  
18 Counter-Claimant, )  
19 v. )  
20 SUN PACIFIC FARMING COOPERATIVE, )  
21 INC., a California corporation; )  
22 SUN PACIFIC FARMING CO., a )  
23 California corporation; BERNE H. )  
EVANS III; and RICHARD PETERS, )  
Counter- )  
Defendants. )  
24 \_\_\_\_\_ )  
25

26         This matter came before the Court for bench trial on January  
27 27, 2009, following the remand from the Court of Appeals for the  
28 Ninth Circuit, following vacation and remand for determination of  
the amount of punitive damages. Plaintiff, Sun Pacific Farming

1 Cooperative, Inc., ("Sun Pacific") was represented by Klein,  
2 DeNatale, Cooper, Rosenlieb & Kimball, LLP, by T. Scott Belden,  
3 Esq. Plaintiff, Sun Pacific Farming Cooperative, Inc., a  
4 California corporation; Sun Pacific Farming Co., a California  
5 corporation; and Richard Peters were represented by The Webb Law  
6 Firm by Kent E. Beldauf, Jr., Esq.

7 Based on the undisputed facts set forth in the Final Pre-  
8 Trial Order, the Findings of Fact, and Conclusions of Law entered  
9 by the Court June 16, 2006, the Court of Appeals' Memorandum of  
10 Decision filed May 8, 2008, and the evidence and arguments  
11 presented by the parties at trial on January 27, 2009, including  
12 trial briefs, supplemental written argument, and Proposed  
13 Findings of Fact and Conclusions of Law on the issue of punitive  
14 damages, the Court makes the following Findings of Fact and  
15 Conclusions of Law. To the extent any Finding of Fact can be  
16 interpreted as a Conclusion of Law, or a Conclusion of Law can be  
17 interpreted as a Finding of Fact, it is so intended.

18

19 A. Relevant Procedural Background

20 Following a bench trial and the filing of Findings of Fact  
21 and Conclusions of Law, entered June 16, 2006, the trial court  
22 found Counter-Defendants Sun Pacific Farming Cooperative, Inc.,  
23 Sun Pacific Farming Company, Berne H. Evans, III, and Richard  
24 Peters, liable to Sun World International, Inc., for intentional  
25 misrepresentation, conversion, and declaratory relief regarding  
26 the ownership of the Sugraone grape variety. The Judgment  
27 entered June 16, 2006, held each of the Counter-Defendants liable  
28 to Sun World for compensatory damages in the sum of \$8,064.00,

1 costs in the amount of \$27,684.30, and punitive damages of  
2 \$250,000.00.

3 By its Memorandum Decision filed May 8, 2008, the Court of  
4 Appeals affirmed the trial court's decision in all respects,  
5 except the amount of the punitive damages award specifically  
6 holding: "Roughly 31-to-1 ratio between the punitive damages  
7 award and compensatory damages award exceeds the outer limits  
8 that the Supreme Court has indicated would comport with due  
9 process. [A]lthough the misconduct at issue here is serious and  
10 intentional, it does not appear to be in the realm of the most  
11 egregious conduct that would otherwise support such a high  
12 damages ratio." The Court of Appeals remanded to the District  
13 Court for reconsideration and recalculation of the amount of the  
14 punitive damages award.

15

16 B. Findings of Fact

17 1. By written Agreement of Sale dated March 15, 1972, John  
18 Garabedian, Bertha Garabedian, Richard Peters, Barbara Peters,  
19 the Panoche Land Company, and the Peters & Garabedian Partnership  
20 sold specifically enumerated parcels of real estate, personal  
21 property and equipment, trademarks, patents and patent  
22 applications to Superior Farming Company.

23 2. The 1972 Agreement affected a transfer of "certain  
24 parcels of real property . . . certain personal property and  
25 equipment and certain patents, patent applications and trademark  
26 rights as follows:" which are listed and numbered paragraphs 1-3  
27 of the first page of the 1972 Agreement. Those paragraphs recite  
28 the sale of specifically enumerated real property, Exhibits A, B,

1 C, and D to Appendix 1 of the 1972 Agreement, personal property  
2 (Exhibit E to Appendix 1 of the 1972 Agreement), patents and  
3 patent applications (Exhibit F to Appendix 1 of the 1972  
4 Agreement) and two trademarks for the total purchase and sale  
5 price of \$7,711,750.00.

6       3. Exhibits A-D of the 1972 Agreement specifically listed  
7 the transferred real estate. Exhibit E of the 1972 Agreement  
8 lists, in 35 pages, the over-500 transferred items of personal  
9 property. Exhibit F to the '72 Agreement is a list of the  
10 transferred patents and patent applications.

11      4. The Superior Seedless Sugraone vines are not described  
12 or included in the 35 pages listing the personal property and  
13 equipment that was sold in the 1972 Agreement. (Exhibit E to the  
14 1972 Agreement).

15      5. The Superior Seedless/Sugraone grape variety is not  
16 highlighted in the 1972 Agreement and no portion of the Agreement  
17 specifically discusses that grape variety.

18      6. The only mention in the Agreement of the Superior  
19 Seedless/Sugraone grape variety is contained in Exhibit F to  
20 Appendix A1 of the '72 Agreement which is the list of the  
21 transferred patents and patent applications. The patent  
22 application is referenced at the second page of Exhibit F to  
23 Appendix 1 of the 1972 Agreement (page 108), as "GRAPEVINE  
24 'BRENDA W. WHITE')." Grapewines of such variety are not  
25 addressed or discussed in the 1972 Agreement.

26      7. Superior Farming understood that John Garabedian was  
27 negotiating on behalf of the Peters & Garabedian Partnership  
28 (which was legally owned by John Garabedian and Ed Peters

1 [Defendant Richard's father]) for the items sold by the  
2 partnership, the trademarks, the remaining real estate, the  
3 specifically enumerated personal property and equipment, and the  
4 patents and patent applications included in the '72 Agreement  
5 were sold to Superior Farming by the Garabedians and a  
6 corporation controlled by the Garabedians.

7       8. Richard Peters was a party to the 1972 transaction only  
8 for the sale of two parcels of real estate to Superior Farming.

9       9. John Garabedian did not represent to Superior Farming  
10 that he was negotiating on behalf of Richard Peters.

11      10. Superior Farming made no inquiry as to who owned the  
12 properties on which the Superior Seedless/Sugraone vines were  
13 growing.

14      11. No Superior Farming representative discussed with  
15 Richard Peters the transfer of all Superior Seedless/Sugraone  
16 vines located on his real property.

17      12. Mr. Peters never represented to anyone from Superior  
18 Farming that all Superior Seedless/Sugraone vines growing on his  
19 property would be transferred to Superior Farming.

20      13. The issue of Richard Peters transferring all existing  
21 Superior Seedless/Sugraone vines on his real property was never  
22 raised by Superior Farming with Richard Peters.

23      14. Richard Peters specifically intended to retain a few  
24 Superior Seedless/Sugraone cuttings so that he could use them for  
25 cross-breeding purposes following the expiration of the Superior  
26 Seedless/Sugraone patent. He did not disclose this intent to  
27 Superior Farming.

28      15. Superior Farming paid a total of \$7,711,750.00 for the

1 1972 asset purchase. None of the purchase price was allocated to  
2 the Superior Seedless/Sugraone grape variety.

3 16. The Mecca Ranch land on which cuttings from the  
4 Superior Seedless/Sugraone vines were planted, was not involved  
5 in the original sale transaction.

6 17. Richard Peters was a joint owner of the Mecca Ranch.  
7 Richard Peters owned the Superior Seedless/Sugraone vines growing  
8 there.

9 18. During the pruning of Superior Seedless/Sugraone vines  
10 growing on the Mecca Ranch in January of 1972, Richard Peters  
11 planted cuttings from these vines on property not involved in the  
12 1972 transaction with Superior Farming.

13 19. In the 1980s Richard Peters took cuttings of the  
14 Sugraone from the vines he transplanted in 1972 and grafted them  
15 onto real property owned by Fowler Packing Company and Sam  
16 Parmigian.

17 20. In or about 1993 Richard Peters took cuttings from the  
18 Sugraone vines in Fowler and transplanted them to real property  
19 owned by Sun Pacific in Porterville, California.

20 21. Sun Pacific and Richard Peters grew at least 180  
21 Sugraone vines at the Porterville location until August 2001. In  
22 or about March 1993 Sun Pacific and Richard Peters entered into  
23 an agreement by which Richard Peters assigned all of his right,  
24 title and interest in the Sugraone grapevines to Sun Pacific.

25 22. Sun Pacific commercially sold 672 boxes of Superior  
26 Seedless Grapes (Sugraone) at \$12.00 a box for a total of  
27 \$8,064.00.

28 23. Richard Peters was aware at the time of the sale

1 transaction that a patent application had been filed by John  
2 Garabedian on the Superior Seedless/Sugraone grape variety.

3       24. Richard Peters intended to use the Sugraone variety for  
4 propagation purposes following the expiration of the patent on  
5 the Sugraone.

6       25. Richard Peters never commercialized the Superior  
7 Seedless/Sugraone grape variety.

8       26. Richard Peters believed that the Sugraone variety was  
9 superior to Thompson Seedless grapes and for that reason called  
10 the Sugraone "Superior Seedless."

11      27. The consideration for the sale to Sun Pacific by  
12 Richard Peters of the Sugraone was that Sun Pacific agreed to pay  
13 to Richard Peters, a percentage of the revenues derived from the  
14 sale of the Sugraone variety by Sun Pacific.

15      28. The Sugraone agreement was a writing dated August 23,  
16 2001, which also provided that Sun Pacific would indemnify  
17 Richard Peters in the event of litigation.

18      29. Richard Peters has served on the Board of Directors of  
19 Sun Pacific since before the vines were transferred.

20      30. Richard Peters served as a consultant for Sun Pacific  
21 for 14 years as of 2004 and had been a member of the Board of  
22 Directors as of 2004.

23      31. Sun Pacific initiated this lawsuit August 24, 2001, to  
24 validate its possession of the Sugraone grape variety. The  
25 complaint sought damages for violation of the Sherman Antitrust  
26 Act, patent infringement, declaratory relief, and unfair  
27 competition under California law.

28      32. Following its filing of the complaint in this case, Sun

1 Pacific stipulated to a preliminary injunction preventing its  
2 propagation and commercialization of the Superior Seedless/  
3 Sugraone variety pending resolution of this dispute by the Court.

4       33. Mr. Peters' retention of the Superior Seedless/  
5 Sugraone variety caused this lawsuit and the expense and  
6 inconvenience incurred by Sun World's defense and prosecution of  
7 this lawsuit.

8       34. The Ninth Circuit specifically held that the Counter-  
9 Defendants' conduct in this case does not appear to be in the  
10 realm of the "most egregious conduct that would support a high  
11 damages ratio."

12      35. The conduct of Richard Peters in hiding from Sun World,  
13 his movement of the vines to other properties and transfer to Sun  
14 Pacific, was not a conversion as that variety of grape, replanted  
15 by Richard Peters in other locations, was not growing on property  
16 that was sold to Sun Pacific. Rather, his pre-patent expiration  
17 (1989) activities were intended to preserve Sugraone vines for  
18 commercialization after expiration of the patent.

19      36. Intentional and willful patent infringement gives rise  
20 to a claim for treble damages.

21      37. Although Sun World dismisses the manner in which Sun  
22 Pacific presented this dispute, it is true that Sun Pacific  
23 acknowledged: the commercial value of the Sugraone; Superior  
24 Farming's prior patent rights; that Sun World had market power in  
25 the relevant market of seedless grapes and the market for the  
26 Sugraone variety; and that Sun Pacific intended immediate  
27 commercialization of the Sugraone.

28      38. Sun Pacific stipulated to the issuance of a preliminary

1 injunction after the injunction was sought by Sun Pacific.

2       39. Sun Pacific's possession and sale of the Sugraone was a  
3 direct result of Richard Peters' wrongful transfer of the  
4 Sugraone vines to Sun Pacific.

5       40. Conduct that proves the wrongful intent of Richard  
6 Peters includes that: (a) he knew that the sale transaction to  
7 Superior Farming was to convey the entire fruit and grape  
8 business of Garabedian; (b) Mr. Peters "secretly" transplanted  
9 vines from the Mecca Ranch after it was inspected for the sale,  
10 but prior to Mr. Peters' execution of the Bill of Sale, which  
11 prevented 100% of Sugraone grapes from being conveyed to  
12 Superior; (c) Mr. Peters kept secret his continued possession of  
13 the Sugraone grape after the sale.

14      41. The Bill of Sale signed by Peters warranted that all of  
15 the right, title, and interest in the vines and growing fruit on  
16 the real property being conveyed were within his authority to  
17 transfer and the parties intended to convey exclusive ownership  
18 and control over the Sugraone grape to Superior Farming.

19      42. The trial court's finding that Mr. Peters' testimony to  
20 the contrary was "not credible," was sustained on appeal.

21      43. The Court also found that Mr. Peters knowingly altered  
22 the condition of the Sugraone vines to be sold "by destroying  
23 exclusivity," and that he failed to disclose that fact while  
24 benefitting from the sale.

25      44. Mr. Peters concealed his actions and failed to disclose  
26 that he had transferred Sugraone vines for about 30 years.

27      45. After the patent expired in 1989, in 1993 Peters  
28 entered into the agreement for the sale of Sugraone grapes by Sun

1 Pacific with revenue from such sales to be paid to Mr. Peters.  
2 Mr. Peters also made an agreement with Sun Pacific that he would  
3 be indemnified in the event of litigation, which Sun Pacific  
4 initiated the following day.

5       46. Mr. Peters had been a consultant with Sun Pacific for  
6 14 years and a member of its Board for 12 years as of the time of  
7 the lawsuit.

8       47. In calculating punitive damages, the nature and extent  
9 of damages awarded is considered; as is the ratio between actual  
10 potential harm and the punitive damage award; and the net worth  
11 and net income of the party against whom punitive damages are to  
12 be awarded is also considered.

13       48. This case does not entail an egregious course of  
14 conduct done with vile intentions. The 31:1 ratio originally  
15 awarded by the trial court has been found unconstitutional. The  
16 totality of facts do not justify exceeding a single digit damage  
17 ratio of compensatory damages to actual damages.

18       49. Here, the Ninth Circuit specifically cited cases  
19 collected in *State Farm Mut. Ins. Co. v. Campbell*, 538 U.S. 408,  
20 424, 425, and held that, "Although the misconduct at issue here  
21 is serious and intentional, it does not appear to be in the realm  
22 of the most egregious conduct that would otherwise support such a  
23 high damages ratio." See, *id.*, (stating that "'An award of more  
24 than four times the amount of compensatory damages might be close  
25 to the line of constitutional impropriety,' and that, 'In  
26 practice, few awards exceeding a single-digit ratio between  
27 punitive and compensatory damages, to a significant degree, will  
28 satisfy due process.'"); see also, *Planned Parenthood*, 422 F.3d

1 at 954-57, 962-63 (collecting cases discussing the propriety of  
2 large punitive damages awards); *Swinton v. Potomac Corp.*, 270  
3 F.3d 794, 818-20 (9th Cir. 2001). . . ."

4       50. Discussion of the Drake Larson matter is unhelpful as  
5 the parties stipulated that the outcome of that trial could not  
6 be raised in this proceeding. Exhibit 29, Final Pretrial Order  
7 filed October 30, 2003, at 49:23-27.

8       51. Sun World's contentions about future harm misses the  
9 mark. Here, minimal commercialization occurred, less than  
10 \$10,000 in one season. Sun Pacific voluntarily brought the  
11 matter to court to attempt to ascertain the extent of Mr. Peters'  
12 transfer rights in the Sugraone. Although Mr. Peters' conduct  
13 was wrongful and deceitful, because the matter was presented by  
14 Sun Pacific to Sun World for consideration and then submitted to  
15 the judicial system. This reduced the actual potential for  
16 future harm. Defendants' conduct is not sufficiently culpable to  
17 justify more than a single digit punitive award.

18       52. Richard Peters is a lay person. The record is devoid  
19 of any evidence that he was knowledgeable about patents. His  
20 testimony shows he believed that once the patent expired, he  
21 would be free to commercialize the Sugraone grape variety. Even  
22 if this conduct was ignorant or reckless, he took no steps to  
23 commercialize the Sugraone until four years following the  
24 expiration of the patent.

25       53. Although Mr. Peters moved the Sugraone from farm to  
26 farm and kept that secret, that conduct is punishable as  
27 deceitful. This conduct did not create the huge potential for  
28 future damages suggested by Plaintiffs.

1       54. The overall purchase price of \$7.7 million is entirely  
2 irrelevant to the evaluation of the potential for future harm if  
3 the patent was violated. Mr. Peters did nothing for 30 years to  
4 commercialize the Sugraone variety which, although not conduct  
5 amounting to mitigation, entirely avoided any financial loss to  
6 Sun World during the life of the patent.

7       55. Mr. Garabedian did request that Richard Peters be  
8 permitted to grow some of Garabedian's patented varieties of  
9 grape on Mr. Peters' own land after the sale transaction. This  
10 was rejected by the buyer, Superior Farming, as was the  
11 suggestion of Mr. Garabedian that Mr. Peters be licensed to grow  
12 some of the patented varieties following the sale.

13       56. Garadebians' request for permission to Mr. Peters to  
14 grow patented varieties was understood as a request to  
15 "commercially grow and sell" patented varieties following the  
16 transaction. Superior Farming did not want Mr. Peters to  
17 commercialize patented varieties following the transaction. Mr.  
18 Peters did not do so during the life of the patent. His first  
19 efforts to commercialize the variety occurred in 1993. These  
20 facts establish Mr. Peters' knowledge that Superior Farming  
21 refused to grant him permission to commercialize the Sugraone  
22 grape.

23

24    CONCLUSIONS OF LAW

25       1. *Exxon Shipping Co. v. Baker*, 128 S.Ct. 2605, 2625-27  
26 (2008) is a maritime case decided under Federal maritime law,  
27 however, it recognizes that punitive damages that bear no  
28 relationship to compensatory damages are not favored.

1       2.   The *State Farm* rubric of single-digit punitive damage  
2 awards has been consistently applied by the Ninth Circuit in  
3 *Zhang v. American Gem Seafoods, Inc.*, 339 F.3d 1020, 1042 (9th  
4 Cir. 2003); *Banes LLC v. Arco Products Co.*, 405 F.3d 764 (9th  
5 Cir. 2005); and *Planned Parenthood of Columbia/Willamette, Inc.*  
6 *v. American Coalition of Life Activists*, 422 F.3d 949 (2005).

7       3.   *State Farm* recognizes reprehensibility factors that  
8 must be analyzed: (1) type of harm - physical versus economic;  
9 (2) reckless disregard for health and safety of others; (3)  
10 financially vulnerable target; (4) repeated actions; and (5)  
11 intentional malice or mere accident, the following show that  
12 although wrongful and punishable, evidence bearing on the factors  
13 does not establish any significant degree of reprehensibility  
14 beyond that normally associated with intentionally deceitful  
15 conduct.

16       4.   The Type of Harm, patent infringement, is economic, not  
17 physical. It is also totally redressable under the patent laws  
18 of the United States.

19       5.   Reckless Disregard for the Health and Safety of Others  
20 was not practiced. Here, Peters did nothing with the wrongfully  
21 withheld Sugraone vines until after the expiration of the patent.

22       6.   A Financially Vulnerable Target: Sun World, in the  
23 context of this litigation, is not financially vulnerable.

24       7.   Repeated Action: other than hiding the grapevines for  
25 30 years, there was one commercial sale of 672 boxes of Sugraone  
26 variety.

27       8.   Intentional Malice or Mere Accident: the conduct here  
28 was intentional and fraudulent. It also breached the contract of

1 sale and had the purpose of trying to avoid the patent rights of  
2 Sun World. An approximately 5 times ratio, \$40,000.00, is a  
3 reasonable punitive damages award and will accomplish all the  
4 purposes of the law to punish and set an example.

5        9. An award of punitive damages in the amount of  
6 \$40,000.00 is entered against Defendants, and each of them, to  
7 appropriately redress the deceit, concealment, and attempt to  
8 avoid the patent rights created by the sale of Sugraone in the  
9 manner described.

10        10. No consideration may be given to the amount of costs  
11 recovered, attorneys fees, which were not recovered, or any sum  
12 other than the compensatory damages actually awarded to calculate  
13 the State Farm ratio. The compensatory damage award in this case  
14 was \$8,064.00. An award of \$40,000.00 in punitive damages  
15 results in a ratio of slightly in excess of 5:1.

16        11. The conduct of Richard Peters is not significantly  
17 egregious or reprehensible as he never actually violated the  
18 Sugraone patent, never commercialized the Sugerone grape variety,  
19 and his assignee, Sun Pacific, immediately brought suit to  
20 determine whether the Sugraone variety could be commercialized  
21 after the expiration of the patents.

22 Defendant shall submit a form of judgment within five days  
23 following the date of electronic service of these Findings.

25 | IT IS SO ORDERED.

**26** | Dated: March 31, 2009

/s/ Oliver W. Wanger  
UNITED STATES DISTRICT JUDGE